



WOOD PHILLIPS KATZ CLARK & MORTIMER
500 W. Madison Street
Suite 3800
Chicago, IL 60661

In re Application of: :
BULLERDIEK, Jorn :
U.S. Application No.: 09/890,684 : DECISION ON PETITION
PCT No.: PCT/DE00/00364 :
International Filing Date: 04 February 2000 :
Priority Date: 04 February 1999 :
Attorney's Docket No.: BOH6278P0010US :
For: PREPARATION FOR THE PREVENTION :
AND/OR TREATMENT OF A TISSUE :
CHANGE OF MESENCHYMAL ORIGIN :

This decision is issued in response to applicant's "Petition for Removal of a Holding of Abandonment Under 37 CFR 1.181(a)" filed 06 May 2004, and resubmitted on 09 November 2004 and 07 December 2004. No petition fee is required.

BACKGROUND

On 04 February 2000, applicant filed international application PCT/DE00/00364 which claimed a priority date of 04 February 1999 and which designated the United States. On 10 August 2000, a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB"). The deadline for payment of the basic national fee was thirty months from the priority date, i.e., 04 August 2001.

On 03 August 2001, applicant filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment for the basic national fee, an English translation of the international application, and an executed declaration.

On 09 November 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905), indicating that proper sequence listing materials, including a computer readable for (CRF) of the sequence listing, were required.

On 29 January 2002, applicant filed a response to the Notification Of Missing Requirements which included a purported CRF of the sequence listing and a "Statement Under 37 CFR 1.821(f)."

On 01 April 2002, the DO/EO/US mailed a Notification Of Defective Response (Form PCT/DO/EO/916) indicating that applicant's response to the Notification Of Missing

Requirements was defective and that proper sequence listing materials were still required. The Notice was accompanied by a "CRF Problem Report" which indicated that the CRF filed by applicant in response to the Notification Of Missing Requirements was damaged. The Notice provided a one-month non-extendable response deadline.

On 22 April 2002, applicant filed a response to the Notification Of Defective Response which states that it was accompanied by a CRF of the sequence listing.

On 03 December 2002, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909).

On 15 September 2003, the DO/EO/US mailed a "Withdrawal Of Previously Sent Notice" stating that the Notification of Abandonment mailed 03 December 2002 was issued in error and was therefore withdrawn. Also on 15 September 2003, the DO/EO/US mailed a "Notification To Comply With Requirements For Patent Applications Containing Nucleotide And/Or Amino Acid Sequence Disclosures" (Form PCT/DO/EO/922) again requiring submission of a readable CRF.

On 20 November 2003, applicant filed a response to the "Notification To Comply With Requirements For Patent Applications Containing Nucleotide And/Or Amino Acid Sequence Disclosures."

On 26 April 2004, the DO/EO/US mailed a second Notice Of Abandonment (Form PCT/DO/EO/909). This Notice indicates that the application is abandoned for failure to file a response to the Notification mailed 15 September 2003.

On 06 May 2004, applicant filed the petition to withdraw the abandonment considered herein. The petition notes that a timely response to the 15 September 2003 Notification was filed on 20 November 2003. The petition includes a copy of the previously filed response, a copy of the stamped return postcard, and a replacement copy of the CRF included with the earlier submission. On 09 November 2004 and 07 December 2004, applicant resubmitted copies of the petition materials.

DISCUSSION

The application file contains a copy of the "Response to Notification to Comply with Requirements for Patent Applications Containing Nucleotide and/or Amino Acid Sequence Disclosures." filed by applicant. This response bears a USPTO receipt stamp dated 20 November 2003, confirming that a timely response was filed to the "Notification To Comply With Requirements For Patent Applications Containing Nucleotide And/Or Amino Acid Sequence Disclosures" mailed 15 September 2003, as asserted by applicant in the present petition. Moreover, the itemized return postcard included with the present petition confirms that

the 20 November 2003 submission included a computer disc containing a purported CRF of the sequence listing.

However, the sequence materials contained on this CRF are not in proper form, as detailed in the "Raw Sequence Listing Error Report" accompanying this decision.¹ Thus, although a timely response to the "Notification To Comply With Requirements For Patent Applications Containing Nucleotide And/Or Amino Acid Sequence Disclosures" was filed on 20 November 2003, such response was not in the required format. In light of applicant's failure to file a proper response to the "Notification To Comply With Requirements For Patent Applications Containing Nucleotide And/Or Amino Acid Sequence Disclosures" mailed 15 September 2003 (and the failure to date to submit an acceptable CRF of the sequence listing), abandonment of the application was appropriate.

CONCLUSION

Applicant's petition to withdraw the holding of abandonment under 37 CFR 1.181 is **DISMISSED** without prejudice.

Any request for reconsideration of the petition must be filed within **TWO (2) MONTHS** of the mail date of the present application.

In the alternative, applicant might consider filing a petition to revive the unintentionally abandoned application under 37 CFR 1.137(b). Any such petition would need to be accompanied by the sequence listing materials required, including a readable CRF of the sequence listing in the proper format.

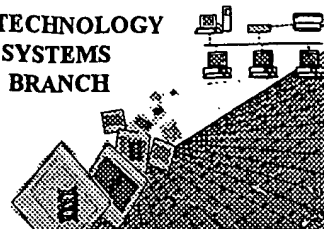
Please direct further correspondence with respect to this matter to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (571) 272-3296
Facsimile: (571) 273-0459

Enclosure: CRF Raw Sequence Listing Error Report processed 13 May 2004

¹ The reviewed CRF is the copy filed by applicant with the petition on 06 May 2004. Based on applicant's statements and the stamped return postcard, this CRF is treated as a copy of the CRF originally filed on 20 November 2003.



RAW SEQUENCE LISTING ERROR REPORT

The Biotechnology Systems Branch of the Scientific and Technical Information Center (STIC) detected errors when processing the following computer readable form:

Application Serial Number: 09/890,684A
Source: 1600
Date Processed by STIC: 5/13/04

THE ATTACHED PRINTOUT EXPLAINS DETECTED ERRORS.

PLEASE FORWARD THIS INFORMATION TO THE APPLICANT BY EITHER:

- 1) INCLUDING A COPY OF THIS PRINTOUT IN YOUR NEXT COMMUNICATION TO THE APPLICANT, WITH A NOTICE TO COMPLY or,
- 2) TELEPHONING APPLICANT AND FAXING A COPY OF THIS PRINTOUT, WITH A NOTICE TO COMPLY

FOR CRF SUBMISSION AND PATENTIN SOFTWARE QUESTIONS, PLEASE CONTACT MARK SPENCER, TELEPHONE: 703-308-4212; FAX: 703-308-4221

Effective 12/13/03: TELEPHONE: 571-272-2510; FAX: 571-273-0221

TO REDUCE ERRORED SEQUENCE LISTINGS, PLEASE USE THE CHECKER VERSION 4.1 PROGRAM, ACCESSIBLE THROUGH THE U.S. PATENT AND TRADEMARK OFFICE WEBSITE. SEE BELOW FOR ADDRESS:

<http://www.uspto.gov/web/offices/pac/checker/chkr41note.htm>

Applicants submitting genetic sequence information electronically on diskette or CD-Rom should be aware that there is a possibility that the disk/CD-Rom may have been affected by treatment given to all incoming mail.

Please consider using alternate methods of submission for the disk/CD-Rom or replacement disk/CD-Rom.

Any reply including a sequence listing in electronic form should NOT be sent to the 20231 zip code address for the United States Patent and Trademark Office, and instead should be sent via the following to the indicated addresses:

1. EFS-Bio (<<http://www.uspto.gov/ebc/efs/downloads/documents.htm>> , EFS Submission User Manual - ePAVE)
2. U.S. Postal Service: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450
3. Hand Carry directly to (EFFECTIVE 12/01/03):
U.S. Patent and Trademark Office, Box Sequence, Customer Window, Lobby, Room 1B03, Crystal Plaza Two, 2011 South Clark Place, Arlington, VA 22202
4. Federal Express, United Parcel Service, or other delivery service to: U.S. Patent and Trademark Office, Box Sequence, Room 1B03-Mailroom, Crystal Plaza Two, 2011 South Clark Place, Arlington, VA 22202

Revised 10/08/03



1600

RAW SEQUENCE LISTING

DATE: 05/13/2004

PATENT APPLICATION: US/09/890,684A

TIME: 12:18:38

Input Set : A:\PTO.LM.txt

Output Set: N:\CRF4\05122004\I890684A.raw

3 <110> APPLICANT: Bullerdiel, Jrn
 5 <120> TITLE OF INVENTION: Preparation for The Prevention and/or Treatment
 6 of a Tissue Change of Mesenchymal Origin
 8 <130> FILE REFERENCE: B3960PCT
 C--> 10 <140> CURRENT APPLICATION NUMBER: US/09/890,684A
 C--> 11 <141> CURRENT FILING DATE: 2001-08-03
 13 <160> NUMBER OF SEQ ID NOS: 47
 15 <170> SOFTWARE: PatentIn Ver. 2.1

ERRORED SEQUENCES

pp 1-5
 Does Not Comply
 Corrected Diskette Needed

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 225 <211> LENGTH: 430
 226 <212> TYPE: DNA
 227 <213> ORGANISM: Adenovirus: isolate M7-1s
 229 <400> SEQUENCE: 17
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 231 agctggcctg gcaatgacag gctgttgagc ccaaagtgtg ttgaaatcaa gcgcactgtg 120
 232 gacggggaag gatacaacgt ggcacaatgc aacatgacca aagactgggt cctagttcag 180
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 243 <213> ORGANISM: Adenovirus: isolate M8-2s
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 516 <211> LENGTH: 430
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 518 <213> ORGANISM: Adenovirus: isolate M3.3P-2
 520 <400> SEQUENCE: 28

430 ← insert
 cumulative
 base total
 at right margin
 of each
 line

430 ← insert

P.2

RAW SEQUENCE LISTING

DATE: 05/13/2004

PATENT APPLICATION: US/09/890,684A

TIME: 12:18:38

Input Set : A:\PTO.LM.txt

Output Set: N:\CRF4\05122004\I890684A.raw

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E--> 523 gacggggaag ggtacaatgt ggcccaatgt aacatgacca aagactgggt cctgggttcag 180
E--> 524 atgcttgcca actacaacat tggctaccag ggcttttaca ttcctgaggg atacaaggat 240
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526 aattacactg actacaaagc cggcacctta ccataccaac acaacaactc tggctttgta 360
527 gggatatctg cacctactat gagacaaggg gaaccttacc cagccaatta tccatacccg 420
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see
p. 5
for error
explanation

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607 1 5 10 15
609 Asp Ser Ser Val Ser Trp Pro Gly Asn Asp Arg Leu Leu Ser Pro Asn
610 20 25 30
612 Glu Phe Glu Ile Lys Arg Thr Val Asp Gly Glu Gly Tyr Asn Val Ala
613 35 40 45
E--> 615 Xaa Xaa Asn Met Thr Lys Asp Trp Phe Leu Val Gln Met Leu Ala Asn
616 50 55 60
E--> 618 Tyr Asn Ile Gly Tyr Gln Gly Phe Tyr Xaa Pro Glu Gly Tyr Lys Asp
619 65 70 75 80
621 Arg Met Tyr Ser Phe Phe Arg Asn Phe Gln Pro Met Ser Arg Gln Val
622 85 90 95
E--> 624 Ala Asp Glu Xaa Asn Tyr Thr Asp Tyr Lys Ala Gly Thr Leu Pro Tyr
625 100 105 110
627 Gln His Asn Asn Ser Gly Phe Val Gly Tyr Leu Ala Pro Thr Met Arg
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630 Gln Gly Glu Pro Tyr Pro Ala Asn Tyr Pro Tyr Pro Leu Ile Gly
631 130 135 140

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see p. 5

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729 gacggggaag ggtacaatgt ggcccaatgt aacatgacca aagactgggt cctgggttcag 180
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4306 insert

P. 3

RAW SEQUENCE LISTING

DATE: 05/13/2004

PATENT APPLICATION: US/09/890,684A

TIME: 12:18:38

Input Set : A:\PTO.LM.txt

Output Set: N:\CRF4\05122004\I890684A.raw

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761 gacggggaag gatacaacgt ggcacaatgc aacatgacca aagactggtt cctagttcag 180
762 atgcttgcca actacaacat tggctaccag ggcttttaca tccctgaggg atacaaggat 240
763 cgcatgtact cttttttcag aaacttccag cctatgagca ggcaggtggt tgatgaggtt 300
764 aattacactg actacaaagc cgtcacctta ccataccaac acaacaactc tggctttgta 360
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E--> 766 ctcacgga
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771 <212> TYPE: DNA
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794 cgcatgtact cttttttcag aaacttccag cctatgagca ggcaggtggt tgatgaggtt 300
795 aattacactg actacaaagc cgtcacctta ccataccaac acaacaactc tggctttgta 360
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E--> 797 ctcacgga
1009 <210> SEQ ID NO: 47
1010 <211> LENGTH: 720

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P.4

RAW SEQUENCE LISTING

PATENT APPLICATION: US/09/890,684A

DATE: 05/13/2004

TIME: 12:18:38

Input Set : A:\PTO.LM.txt

Output Set : N:\CRF4\05122004\I890684A.raw

1011 <212> TYPE: DNA
 1012 <213> ORGANISM: Adenovirus
 1014 <223> OTHER INFORMATION: promoter sequence of the adenoviral protein E1A
 1015 (as shown in fig. 5)
 @> 1017 <400> SEQUENCE: 47
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 1019 aaaagtgcgc gctgtgtggt gattggctgt ggggtgaatg actaacatgg gcggggcggc 120
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 1022 aggatatgag gtagtttttg gcggatgcaa gtgaaaattc tccattttcg cgcgaaaact 300
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 1024 gggccgagta gactttgacc gtttacgtgg aggtttcgat taccgtgttt ttcacctaaa 420
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 1026 atttaaacct gacgagttcc gtcaagaggc cactcttgag tgccagcgag aagagttttc 540
 1027 tcctccgcgc cgcaagtcag ttctgcgctt tgaaaatgag acacctgcgc ttctgccac 600
 1028 aggagattat ctccagtgag accgggatcg aaatactgga gtttgtggta aataccctaa 660
 1029 tgggagacga cccggaaccg ccagtgacgc cttttgatcc acctacgctg cacgatctgt 720
 E--> 1035 17
 delete

insert <2207 wherever <2217, <2227, or <2237 is shown.
 <2207 is a "header only. It never has a response.

VARIABLE LOCATION SUMMARY

DATE: 05/13/2004

PATENT APPLICATION: US/09/890,684A

TIME: 12:18:39

Input Set : A:\PTO.LM.txt

Output Set: N:\CRF4\05122004\I890684A.raw

err explanation
Use of n's or Xaa's (NEW RULES):

Use of n's and/or Xaa's have been detected in the Sequence Listing.

Use of <220> to <223> is MANDATORY if n's or Xaa's are present.

in <220> to <223> section, please explain location of n or Xaa, and which residue n or Xaa represents.

Seq#:28; N Pos. 147,148,222,299

Seq#:32; Xaa Pos. 49,50,74,100

VERIFICATION SUMMARY

PATENT APPLICATION: US/09/890,684A

DATE: 05/13/2004

TIME: 12:18:39

Input Set : A:\PTO.LM.txt

Output Set: N:\CRF4\05122004\I890684A.raw

L:10 M:270 C: Current Application Number differs, Replaced Application Number
L:11 M:271 C: Current Filing Date differs, Replaced Current Filing Date
L:237 M:254 E: No. of Bases conflict, LENGTH:Input:0 Counted:430 SEQ:17
L:253 M:254 E: No. of Bases conflict, LENGTH:Input:0 Counted:430 SEQ:18
L:523 M:340 E: (46) "n" or "Xaa" used: Feature required, for SEQ ID#:28
L:524 M:340 E: (46) "n" or "Xaa" used: Feature required, for SEQ ID#:28
L:525 M:340 E: (46) "n" or "Xaa" used: Feature required, for SEQ ID#:28
L:615 M:340 E: (46) "n" or "Xaa" used: Feature required, for SEQ ID#:32
L:618 M:340 E: (46) "n" or "Xaa" used: Feature required, for SEQ ID#:32
L:624 M:340 E: (46) "n" or "Xaa" used: Feature required, for SEQ ID#:32
L:734 M:254 E: No. of Bases conflict, LENGTH:Input:0 Counted:430 SEQ:36
L:750 M:254 E: No. of Bases conflict, LENGTH:Input:0 Counted:430 SEQ:37
L:766 M:254 E: No. of Bases conflict, LENGTH:Input:0 Counted:430 SEQ:38
L:782 M:254 E: No. of Bases conflict, LENGTH:Input:0 Counted:430 SEQ:39
L:797 M:254 E: No. of Bases conflict, LENGTH:Input:0 Counted:430 SEQ:40
L:1017 M:200 E: Mandatory Header Field missing, <220> Tag not found for SEQ ID#:47
L:1035 M:254 E: No. of Bases conflict, this line has no nucleotides.